

Court No. - 8

Case :- WRIT - C No. - 6296 of 2023

Petitioner :- Chandrika Prasad

Respondent :- State Of U.P. Thru. Secy. Food And Civil Supplies, Lko.
And 3 Others

Counsel for Petitioner :- Suresh Chand Rathour, Dilip Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot, J.

Heard Sri Dilip Kumar Pandey, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

The petitioner was appointed as a fair price shop dealer as a result of vacancy created by the cancellation of the dealership of the erstwhile dealer/respondent no. 4 on 19.02.2017. The petitioner was appointed by letter dated 06.03.2018 which stated that the petitioner's appointment was subject to the fate of the proceedings initiated by the erstwhile dealer against cancellation. The first fair price shop dealer was reinstated by order dated 27.07.2019 and the petitioner's dealership was consequently cancelled. The petitioner took the order of cancellation of fair price shop dealership in appeal. The aforesaid appeal has been finally rejected by the impugned order dated 09.06.2023. During the pendency of the petitioner the petitioner had specifically brought subsequent developments which were relevant for adjudication of controversy in the record of the appellate court. The fair price shop dealership of the erstwhile dealer was again cancelled on 21.01.2023. It

is submitted that the order dated 21.01.2023 cancelling the order of the erstwhile fair price dealer has not been reversed by any court of law.

However the learned appellate court neglected to consider these facts while deciding the appeal.

Learned counsel for the petitioner contends that the petitioner liable to be reinstated in view of the fresh cancellation of the erstwhile fair price shop dealer in the light of the law laid down by Abdul Moin, J. in *Achche Lal Vs State of U.P. Thru. Principal Secretary Food and Civil Supply* (Writ-C No. 12459 of 2020) and law laid down by Supreme Court in *Ram Kumar Vs State of U.P. and others* reported at AIR 2022 SC 4705.

Learned Standing Counsel submits that applicability of the aforesaid pronouncements of the constitutional courts to the facts of this case can be considered by the appellate court after exchange of pleadings between the respective parties.

In the wake of the preceding submissions it is established that the appellate court while passing the impugned order dated 09.06.2023 failed to consider the impact of the cancellation of the erstwhile fair price shop dealer by order dated 22.01.2023 though the same was brought in the record before the appellate court. The impugned order dated 09.06.2023 is accordingly vitiated on account of non application of mind. The order dated 09.06.2023 is set aside. The matter is

remitted to the learned appellate court to execute the following directions:

1. The appellate court shall consider the subsequent developments including second cancellation of the dealership of the erstwhile fair price shop dealer/respondent no. 4 by order dated 22.01.2023.
2. The erstwhile fair price shop dealer/respondent no. 4 shall be given an opportunity of hearing before any order is passed in the appeal.

The writ petition is allowed to the extent indicated above.

However, it is directed that the Sub-Divisional Magistrate concerned shall ensure that rights of the ration card holders do not suffer in any manner on account of the dispute between the fair price shop dealers and that appropriate arrangements are made for the fair price shop in the concerned gram panchayat.

Order Date :- 8.8.2023

Pravin